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NO.

~~91-945~~

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

Paul J. Osadchy - PETITIONER

VS.

THE UNITED STATES DEPARTMENT OF
THE ARMY, ET AL., - RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Paul J. Osadchy - Pro Se
60 Albert Street
N. Arlington, NJ. 07031

(201) 991-8705

80

QUESTION PRESENTED

Did the lower Court err in similarly
dismissing Appellant Pro Se Age
Discrimination Complaint by inaccurately
characterizing it as a request for relief
from Constitutional and grievable wrongs?

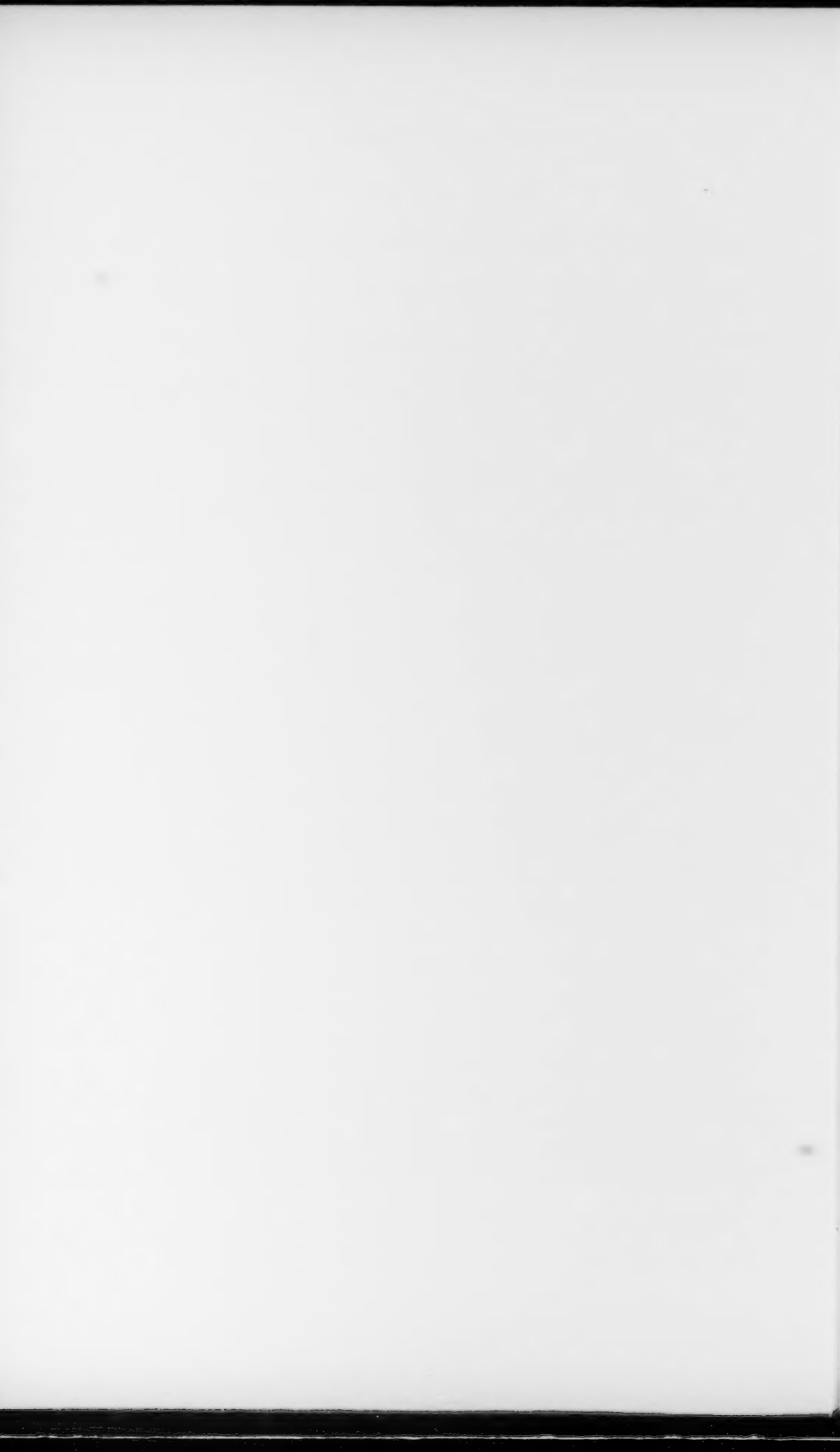


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NO. _____

IN THE SUPREME COURT
OF THE
UNITED STATES OF AMERICA

October Term, 1991

Paul J. Osadchy, - Petitioner
vs.

THE UNITED STATES DEPARTMENT OF
THE ARMY, ET AL., - RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Petitioner, Paul J. Osadchy respectfully
prays that a writ of certiorari issue to
review

the judgment and opinion of the United States Court of Appeals for the Third Circuit overlooking and misapprehended the decisions arrived by the Supreme Court (Stevens v. Treasury) April 24, 1991 and District of Columbia Circuit Court (Venkareddy Chennareddy, General Class Complainant representing himself and all others Similarly Situated, et al., Appellant v. Charles Bowsheer, Comptroller General of the United States, Nos. 89-5408, 89-5409, District of Columbia Circuit Court of Appeals, June 11, 1991), and that of the lower Court err in similarly dismissing Appellant Pro Se Age Discrimination Complaint by inaccurately characterizing it as a request for relief from Constitutional and grievable wrongs.

OPINIONS BELOW

The opinion of the US District Court of Appeals' appears in Appendix 2 to this Petition. The unpublished written opinion of the District Court for the Third Circuit

of New Jersey appears in Appendix 3 to this Petition.

JURISDICTION

The Court of Appeals' Opinion in this matter was filed on August 12, 1991 appears in Appendix 8. A timely Petition for Rehearing in Banc was filed on August 23, 1991. Sur Petition for rehearing was denied September 11, 1991, and is set forth in Appendix 9. This Court's jurisdiction is invoked under Title (29, USCS § § 621 et seq.)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 1 to the United States Constitution is set forth in Appendix 11.

STATEMENT OF THE CASE

The United States District Court, Third Circuit of New Jersey, had jurisdiction pursuant to Title 18, U.S.C. § 3231.

Statement of the Case

This case arises from my allegations that actions taken against me by my employer, the Department of the Army, were violative of my rights under Federal Law, in particular the age discrimination provisions of the Civil Rights Act of 1964. The behaviors complained of arose (in retaliation) after I protested the promotion of a 27 year old with counterfeit credentials over a field of substantially older applicants (See Appendix 5, pages 1-7). My original complaint and amendments (SEE Appendix 1, pages 1-16) were somewhat disjointed and Judge Lifland of the Federal District Court found that the allegations of my complaint failed to state a federal cause of action. I respectfully maintain that he is in error in his interpretation of these allegations and that they do, when taken in context, raise sufficient issues of Age Discrimination to allow them to be addressed at trial. Also, I maintain that the equities of the situation

demand I have the opportunity to demonstrate the meaning of these facts at trial or at least be allowed to amend my complaint to incorporate the Age Discrimination issues which have been known to my adversary (Army) all along.

Statement of Jurisdiction

This case comes to this Court pending the final decision and order of Judge Lifland (SEE Appendix 2, page 9) dated Dec. 20, 1990 dismissing my complaint against the Department of the Army and his Judge Lifland's subsequent, March 19, 1991, denial of my motion for reconsideration. (SEE Appendix 3, page 3). The final order of a lower Federal Court is the proper subject of Appellate review. This is particularly so where, as here, the lower Court has decided without any factual hearings that as a matter of law that certain factual allegations are insufficient to state a claim for relief under Federal Law. Also, I was given the authorization by the

U.S. Army Agency, Office of Equal Opportunity, Mrs. Susan M. Morris to file my case in the Federal Court after exhausting all Administrative procedures 2/. (SEE Appendix 4, pages 1-7).

Statement of Standard of Review

It is my understanding that the standard of review for issues of law is one of "mere" error. This case has not progressed to the point where it can involve a factual dispute. No fact hearings have been held. The lower Court simply decided in a vacuum that my undeveloped allegations were insufficient to proceed.

Statement of issues

There are only two issues:
ONE is whether my complaint and addendum which repeatedly refer to harassment and reprisals occurring after in the context of an Age Discrimination complaint are

2/. Susan Morris ltr. 15 Aug. 1989, Appx.4

sufficient to bring to Federal Court; and TWO is whether it is equitable for a defendant who has known all along that this pro-se plaintiff believes adverse actions to be retaliation for an Age Discrimination complaint should be allowed to prevent plaintiff from amending the complaint to state this fact explicitly.

Statement of Facts

My case is and always will be an Age Discrimination Case (Age 27 v. 61).³ The case was filed on 5 June 1989 (SEE Appendix 1, pages 1-16). It concerned a twenty seven year old who was promoted to the exclusion of a field of substantially older applicants including myself. In order to do this management invented a Masters Degree for this candidate which he freely admitted he did not possess (SEE Appendix 5, page 4 of 7).

I lost my initial EEO case but was given the authorization by the U.S.Army

Agency, Office of Equal Opportunity, Mrs. Susan M. Morris to file my case in the Federal Court after exhausting all Administrative procedures 4/. The CECOM Fort Monmouth management defendants continued to retaliate and level reprisals, intimidation, harassment and stifled career growth for filing action on Age Discrimination.

The Court record in this case indicates that CECOM management fraudulently reported education experience Master's Degree background to cover up and mask age disparity charges of Daniel W. Kuderna, Age 27, 5/. (SEE Appendix 5. page 4 of 7) and which candidate is the "best qualified." See Texas Department of Community Affairs v. Burdine. 450 U.S.248(1981). Such determination is left to the selecting official since most adjudicators have little or no experience in the hundreds of

3/. Susan Morris ltr. 15 Aug. 1989, Appx.4.

4/. Susan Morris ltr. 15 Aug. 1989, Appx.4.

occupational positions that are subject to Title VII litigation.

Only in situations where one is "plainly superior" to a selectee is pretext established. See Bauer v. Bailar. 647 F. 2nd 1037 (10th CIR. 1981).

What followed were details of tactics for robot setups taken against Plaintiff by CECOM management, Fort Monmouth for filing an Age Discrimination action in the Federal Court System seeking remedy and relief 6/,7/, guaranteed by the Constitution, 8/, and Plaintiff's reporting to the Court reprisals, harassment, intimidation, stifling career growth and robot setup actions that are still ongoing to the present time frame, 1991.

5/. Daniel Kuderna Educational submittal,
Appendix 5.

6/. Susan Morris ltr. 15 Aug. 1989,
Appendix 4.

7/. Judge John Lifland Memorandum and Order
19 March 1991, Appendix 3.

8/. First Amendment Appendix 11.

ARGUMENT

Age Discrimination/Reprisals Essence of Complaint. The above stated facts make clear that my complaint regarding the Age Discrimination in promotion started the torrent of reprisals in motion.

Adequate factual allegations in the pleadings. The Court below felt that my pleadings did not raise sufficient factual issues to allow my day in Court. With all due respect, I believe the Court was wrong.

STANDARDS. The Federal Rules of Civil Procedure were specifically drafted to allow Plaintiff's like me a chance to their day in Court without the need for technical pleadings. The Plaintiff need only present a statement of claim sufficient to identify the transactions out of which the claim arises so that the defendant may have notice of the claim. (SEE Federal Rule Civil Procedure 8(a); and Conley v. Gibson, 355 US 41 (1957)). The General rule is that, "a complaint should not be dismissed for

failure to state a claim unless it appears beyond doubt that the Plaintiff can prove no facts in support of his claim which would entitle him to relief." Conley, supra at 45-46; Scheuer v. Rhodes, 416 US 232, 236 (1974). I should be allowed to present my facts at trial or at the very least to amend my complaint to include the simple sentence, "These behaviors of defendants were in direct retaliation for my Age Discrimination complaint."

Defendants aware of substantive Federal issues

Granting my appeal or remanding for a new trial works no hardship on defendants who have known all along that this is an Age Discrimination matter. Again my case has never been anything but an Age Discrimination Case and I intended to handle it as an Age Discrimination Case from the first filing,⁸/not under the statute of Bush v. Lucas in ToTo.

8/. Summons in a Civil Action, Case No.

89-2406 (JCL), Appendix 1.

Dismissal works incurable Injustice on
Plaintiff

To dismiss my complaint now rather than allowing me to prove my facts at trial by jury or amend to assert the proper facts to be proven would deny me Justice.

Remand would not prejudice defendants

Although not pleaded with chronological precision it was discernable, and most importantly KNOWN TO MY ADVERSARY at all stages that this was in fact an action for Age Discrimination and for the subsequent reprisals. They were put on notice by the earlier Court Directed settlement conference, (SEE Appendix 7, page 2 of 4).

It is grossly inequitable that my adversary should be allowed to hide behind a feigned ignorance to dismiss this action.

EEO action was properly and timely appealed. All administrative remedies have lapsed. The Government has in no way been harmed and has conducted itself in bad faith all along.

Remand necessary for JUSTICE

Continuing reprisals, harassment, intimidation, stifled career growth and robot setups since first filing 9/ have taken their toll on my Mental, Physical well being (Heart Attack) and career growth (from 1984 to the present time frame) and now at the age of 68, Memorandum and Order dated 19 March 1991 denial for me to be heard.

CONCLUSION

The Court record below indicates, "the pleadings filed by a pro se will be given the most favorable interpretation." I have, to the best of my ability as a pro se, stated and presented my AGE DISCRIMINATION CASE along with actions of Reprisals, Harassment, Intimidation, Stifling Career Growth and Robot Setups that flowed continually from CECOM, Fort Monmouth management.

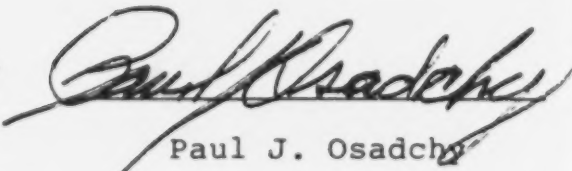
9/. Summons in a Civil Action, Case No.

89-2406 (JCL), Appendix 1.

I now Pray this Honorable Court send back my case of Age Discrimination (Age 27 v 61) to the trial Judge to be tried as an Age Discrimination case only and grant me rightful Court action to receive my just remedy and relief sought under the Law.

IN THE ALTERNATIVE I ask that the Court allow me the simple expedient of making explicit what was implicit all along that is, that the alleged abuses 10/ of my person were in retaliation for my Age Discrimination complaint. This one sentence amendment would not prejudice the Government but would allow me to proceed to prove my claim.

Respectfully submitted,

5 November 1991 
Paul J. Osadchy

Pro Se

10/. Additional EEO filings, Appendix 6.

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

SUMMONS IN A CIVIL ACTION

Case Number: 89-2406 (JCL)

WILLIAM T. WALSH

6-5-89

Clerk

Date

John G. Basilone

By Deputy Clerk

PAUL J. OSADCHY

60 Albert Street

North Arlington) 991-8705

Pro Se Plaintiff

_____ IN THE US DISTRICT

COURT FOR THE DISTRICT

OF NEW JERSEY

TRENTON, NEW JERSEY

Docket No. 89-2406 (JCL)

PAUL J. OSADCHY

Plaintiff,

v.

THE US DEPARTMENT OF THE ARMY,
LUIS A. TORRES, GERALD ZEBROWSKI,
DANIEL KUDERNA, WILLIAM A. WARNE
COLIN F. MACDONNELL, JR., THOMAS
SHEEHAN, VITO DEMONTE, ROBERT
GIORDANO, LIN HEMRICK AND ODESSA
LIVINGSTON (IN THEIR OFFICIAL AND
INDIVIDUAL CAPACITIES).

Defendants

CIVIL ACTION

AFFIDAVIT/SUMMONS

PLEASE TAKE NOTICE that I, Paul J. Osadchy
a federal employee, General Engineer, GS-
801-12, Step 5, employed by the United States
Army, Communications-Electronics Command,
(CECOM) and Fort Monmouth, assigned to the
Production and Manufacturing Technology
(P&MT) Directorate at fort Monmouth, New
Jersey since 1 February, 1981.

1. My first line supervisor was Mr. Luis A. Torres. My second line supervisor is Mr. Gerald Zebrowski. My third line supervisor is Mr. William A. Warne. My fourth line supervisor is Mr. Colin F. MacDonnell Jr. The servicing Civilian Personnel are Mrs. Lin Hemrick and Mrs. Odessa Livingston, the servicing Mgmt. Employee Relations is Mr. Robert Gustafson. The Health and Life Insurance servicing Personnel is Mrs. Lin Hemrick.1/

my former first line supervisor was Mr. Daniel Kuderna as of 20 October, 1984 through my HEART ATTACK, 14 December 1985 and By Pass surgery, 27 March 1987. My second

1/ Mrs. Hemrick's Ltr. to Off. of Personnel Management Ins. "...Failure to terminate benefits on time was due in part to inexperienced personnel assuming new duties during a major reorganization within the Personnel Directorate, Managements failure to submit a timely SF52 and lack of notification from Payroll..."

line supervisor was Mr. Thomas Sheehan.
My former fourth line supervisor was Mr.
Vito DeMonte and Mr. Robert Giordano.

2. It is hereby ordered that being employed
at CECOM, Ft. Monmouth, New Jersey, parties
listed above are parrying me along saying,
"I will be happy to help you off the record."
In the meantime Civilian Personnel Office
(Payroll) according to their records reflect
that I owe 3152 hours absent without pay
(AWOP), back pay, Annual, Sick Leave and
Pay back Health Insurance Premiums.1/

3. It is further understood that according
to my supervisors records, I have not
received a within-grade increase (WIGIE)
since August, 1985, 1/, 2/

4. It is further understood that according
to my supervisor's records, I received a
reclassification from a GS-801-12 to a GS-
855-12 in July, 1986. The Office of Special
Council investigated the reclassification
which resulted in the Payroll Department

2/. U.S. Department of Labor File Number
A2-577206 dated 6 October 1987.

changing my hourly rate to \$19.72, pay period ending 30 January 1988 through 12 March 1988.

5. It is further understood that Mr. Torres conspired with Mr. Zebrowski and Mr. Sheehan evaluating Mr. Osadchy fully successful instead of exceptional on civilian performance DA Form 5398, having overlooked my return to duty 5 June 1987 from a heart attack and subsequent by-pass surgery, 2/ Also, disregarding classified AN/ALQ-144 Specification published in record time whereupon Mr. Osadchy protested action and did not sign DA Form 5398.

6. It is further understood that Mr. Torres, Mr. Zebrowski and Mr. Sheehan under the guise of management prerogatives conspired and instructed the Payroll Department to reclassify Mr. Osadchy back to a GS-801-12 hourly rate of \$18.36 and pay back in one lump sum \$382.76, monies received in salary as a GS-855-12 hourly rate of \$19.72 differential to the Government and to deduct six months, 20 days Service

Comp. Time Federal Service, changed from 12-19-76 to 7-7-77, in retaliation for not signing performance evaluation form.

7. It is further understood that pay back of Health Insurance premiums were incorrectly deducted due to managements negligence.1/

8. Mr. Osadchy is seeking relief from harassment, adverse actions and inactions under the guise of managements prerogatives that resulted in economic, mental and physical harm caused by trauma and stress willfully maligning the Plaintiff, a factor of five times is noted for any dollar value, credits, benefits and career growth.

9. It is further understood that my Federal Life Insurance has been put in jeopardy due to managements negligence.2/

10. It is further understood that Mr. Sheehan ostracized Mr. Osadchy by directing Dr. Frank Elmer and Mr. Chris Thomas not to talk to nor associate with Mr. Osadchy, thereby affecting his career growth, damaging Mr. Osadchy's reputation, creditability,

mental and physical health.2/

11. It is further understood that Mr. MacDonnell placed Mr. Osadchy on the excess authorization list, thereby affecting his career growth, creditability and mental and physical health.2/

12. It is further understood that Mr. Torres conspired with Mr. Zebrowski and Mr. Sheehan to restrict Mr. Osadchy to a designated smoke work area which was detrimental to his physical health and well being.2/

13. It is further understood that Mr. Torres conspired with Mr. Zebrowski and Mr. Sheehan to restrict Mr. Osadchy's flexitime schedule from 5:45 AM - 2:30 PM, which was changed to 7:00 AM - 3:45 PM on a pretext of supervised and monitored health watch.2/

14. It is further understood that request for OPM Audit was denied by Management.

15. It is further understood that restrictions under the guise of Managements prerogatives have been and are continuing to stifle professionalism and career growth.3/

16. It is further understood that request for transfer was denied to promote harassment and destroy morale.3/

17. It is further understood that my privacy was violated by seeding a package found in the Quick Check Store wastebasket, Eatontown, New Jersey on 4 May 1989, which violated Privacy Act (5 USC 552A).

18. It is further understood that Mr. Osadchy was denied access to the General Staff Public Relation Officer by Mr. Torres relative to Footnotes 1/,2/,3/.

19. It is further understood that Mr. MacDonnell, Mr. Zebrowski and Mr. Torres under the guise of management prerogative 3/. At least three SF50/52 actions have been changed, also, denial of office transfer. 4/. Suggestions and Policy statement was destroyed/sabotaged by Management.

directed that patents/suggestions4/ are not to be worked on during company time by the Plaintiff, Mr. Osadchy.

20. It is further understood that Mr. Warne, Mr. Zebrowski and Mr. Torres denied notation of acceptance on DD 5398 dated 12 April 1989, Exceptional, based upon accomplishments of quality work, meeting short suspenses, workload and recognition for award, CECOM
Bottom Line: THE SOLDIER.4/

21. It is further understood that Mr. Warne, Mr. Zebrowski, and Mr. Torres conspired and denied Plaintiff step increase based upon misinformation and to intimidate and degrade Plaintiff.

RELIEF

1. Relief is requested for 3152 hours Absent Without Pay (AWOP)1,2/ at \$19.72 per hour, equates to \$62,157.44, times factor five for a grand total of \$310,787.20.

2. Relief is requested for pay back monies of differential, GS-801/GS-855 hourly rate

of \$18.36 and \$19.72, respectively or \$382.76, times factor five for a grand total of \$1,913.80.

3. Relief is requested to restore 2 years, 6 months, 19 days Federal and Service Comp. Time. I am also requesting recognition and credit for serving in the US Army, Field Artillery, War Department of the United States, Fort Hoyle, Maryland from 5 July to 30 August, 1940, which equates to one year added to Mr. Osadchy's Federal Service Comp. Time, totaling 3 years Federal Service times factor five equated to 7 years, 10 months for a grand total of 20 years, 4 months through June 1989.

4. Relief is requested to return monies paid in error for Health Insurance premiums which were improperly collected by Payroll¹²/ under the guise of Management prerogatives amounting to \$508.77 times factor five equates to \$2,543.85.

5. Relief is requested for Annual Leave 1/2/ of 560 hours times factor five equates to 2800 hours Annual Leave plus Sick Leave

1/,2/ of 816 hours times factor five equates to 4080 hours Sick Leave.

Translation/conversion hours to dollars equates to \$55,216.00 Annual Leave and \$80,457.60 Sick Leave, for a total of \$135,673.60.

6. Relief is requested for stifled career growth and promotion to General Engineer, GS-801-13 times factor five equates to General Engineer, GS-801-18.

7. Relief is requested for 3152 hours for pay back monies differential of \$19.72 and \$36.23 per hour or \$16.51 equates to \$52,039.52 times five factor for a grand total of \$260,197.60. 1/,2/,3/

The factor of five times represents mental anguish and physical harm caused by stress and trauma and economic hardship.

8. Relief is requested for protection from OPM and Legal Dept. against blacklisting, robot set-ups, intimidation, character assassination, embarrassment and humiliation. Also, career growth,

whistleblowing actions and filing complaints and Court actions.

9. Additional Relief shall be at the discretion of the Court as deem appropriate.

10. It is understood that within 30 days of receipt of this document, if relief is not satisfied to the Plaintiff, respective lien(s)/warrant(s)/summon(s) totaling 1/10 monies of each respective defendant will be filed at their respective County Court(s) for July services not rendered.

11. Based on reasons set forth herein, the Plaintiff respectfully requests that the Plaintiff's Affidavit/Summons be amended for ongoing continuing reprisals and harassments, actions and inactions without further notice to the Court.

TAKE FURTHER NOTICE that in support of this Affidavit/Summons, I shall request reasonable expenses, lost wages including

attorney fees incurred by the Plaintiff
in connection with this Affidavit/Summons.

Respectfully submitted,

_____/S/____

PAUL J. OSADCHY, Pro Se

CERTIFICATION OF FILING

I certify that the original of the within
Affidavit/Summons has been filed with the
Clerk of the United States District Court
for the District of New Jersey, Trenton,
New Jersey and stated Defendants.

Plaintiff,

_____/S/____

PAUL J. OSADCHY -Pro Se

ADDENDUM TO Re: Osadchy v. U.S. Dept. of
the Army, et al.,

PAUL J. OSADCHY,

Plaintiff,

v.

THE UNITED STATES DEPARTMENT OF THE ARMY,

LUIS A. TORRES, GERALD C. ZEBROWSKI,

DANIEL KUDERNA, WILLIAM A. WARNE, COLIN

F. MACDONNELL, JR., THOMAS SHEEHAN, VITO
DEMONTE, ROBERT GIORDANO, LIN HEMRICK AND
ODESSA LIVINGSTON and DOES I through XX,
INCLUSIVE (IN BOTH THEIR OFFICIAL AND
INDIVIDUAL CAPACITIES).

Defendants,

A. The Plaintiff was at all times hereafter
mentioned, domiciled in and a citizen of
the State of New Jersey.

This action is of a civil nature
involving, exclusive of interest and costs,
a sum in excess of \$10,000.00. Every issue
of law and fact in the action is wholly
between Plaintiffs who all reside in and
are citizens of states different from those
in which defendants reside and of which
they are citizens (28 USC 1446).

B. Plaintiff is ignorant of the true names
and capacities of defendants sued herein
as DOES I through XX, inclusive, and
therefore sues these defendants by such
fictitious names. Plaintiff will amend
this complaint to allege their true names

and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged were proximately caused by their conduct.

C. This is a civil action for monetary damages, quo warranto, and expungement of records arising under the Constitution of the United States, including the First, Fifth, and Fourteenth Amendments as subsequently set forth. The Court has jurisdiction of this action by reason of Title 28, United States Code Section 1331.

WHEREFORE, Plaintiff respectfully prays judgment against Defendants and requests that the court grant relief as follows:

1. Compensatory damages for wages and benefits lost, past and future, and for lost differential wages and benefits to the date of Plaintiff's retirement in the amount stated above or according to proof.

2. Lost opportunity in future projects.
3. For emotional and mental distress and severe aggravation in the amount established by Court rulings in related cases.
4. Punitive and exemplary damages in the amount of \$1,000,000.00.
5. For costs of the suit herein incurred.

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PAUL OSADCHY, : CIVIL ACTION NO.
Plaintiff, : 89-2406 (JCL)
v. : MEMORANDUM AND ORDER
THE U.S. DEPT. :
OF THE ARMY, ET AL., :
Defendants. : ENTERED on the Docket
_____ : on Dec. 20, 1990
: William T. Walsh, Clerk

LIFLAND, District Judge

Plaintiff is a general engineer employed by the United States Army, Communications-Electronics Command, Fort Monmouth, New Jersey. His pro se complaint alleges various work related grievances. Named as defendants are the United States Department of the Army as well as a number of federal employees at Fort Momouth. Presently before the Court is defendants' motion to dismiss the complaint. After review of the moving papers pursuant to Fed. R. Civ. P. 12(b) (6) the court grants defendants' motion to dismiss the complaint for the following reasons.

BACKGROUND Plaintiff is a 67 year-old general engineer assigned to Fort Monmouth, New Jersey. In 1984 plaintiff applied for a supervisory position. After being refused that position plaintiff filed an administrative complaint with the United States Army alleging that his failure to be selected was based on age discrimination. On May 15, 1989 the Army issued its final decision that plaintiff suffered no age discrimination. On June 5, 1989 plaintiff appealed the Army's final decision to the Equal Employment Opportunity Commission Office of Review Appeals and simultaneously filed his original complaint in this court. Plaintiff subsequently filed "addenda" to his complaint on September 18, 1989 and June 19, 1990. Plaintiff apparently intends these addenda to be construed as amendments to his original complaint. The validity of the service of these addenda on defendants is questionable, though defendants are aware of these addenda and have addressed them in this motion to dismiss the complaint.

Based on the policy of federal courts to liberally construe papers submitted by pro se litigants, and the fact that the defendants would in no way be prejudiced, the court will treat these addenda as amendments to plaintiff's complaint.

Haines v. Kerner, 404 U.S. 519 (1972).

Plaintiff's original complaint in this Court does not involve the 1984 administrative complaint in which plaintiff alleged age discrimination. Rather, that complaint and amendments allege conduct that occurred after the filing of the 1984 complaint. These allegations stem from plaintiff's treatment after a two-year leave following a 1985 heart attack. Specifically, plaintiff contests the adjustments that defendants made to plaintiff's employment status as a result of plaintiff being absent from work for two years.

In his original complaint in this court plaintiff alleges that: the records as to back-pay, sick leave and health insurance

premiums are inaccurate (§ 2 of complaint): plaintiff was not granted a within-grade increase (§ 3): defendants improperly reclassified plaintiff's position (§§ 4 and 6): plaintiff's performance appraisal was too low (§§ 5 and 21): defendants improperly withheld pay, and incorrectly determined plaintiff's service computation date (§§ 6 and 20): defendants improperly deducted health insurance premiums (§ 7): defendants put plaintiff's federal life insurance in jeopardy (§ 9): defendants denied plaintiff's right to free association with colleagues (§ 10): plaintiff's position was inappropriately placed on the excess list (§§ 11): defendants affected plaintiff's working conditions by placing plaintiff in a "designated smoke work area" (§ 12): defendants restricted plaintiff's work schedule (§ 13): defendants denied an audit of plaintiff's position (§ 14): defendants have stifled plaintiff's career growth (§ 15) defendants denied plaintiff's request for a transfer (§ 16): defendants denied

plaintiff access to the Public Relations Officer (§ 18); and defendants prevented plaintiff from working on patents and inventions during company time (§ 19). Plaintiff alleges that the above actions violate his First, Fifth and Fourteenth Amendment rights under the United States Constitution.

DISCUSSION

In support of their motion to dismiss the complaint, defendants argue that plaintiff's sole recourse is through the Administrative Grievance and Appeal procedures set forth in the Civil Service Reform Act of 1978 ("CSRA"). Plaintiff has not submitted papers in opposition to this motion.

The United States Supreme Court in Bush v. Lukas, 462 U.S. 367 (1983), addressed a civil service employee's right to pursue judicial remedies for alleged constitutional violations based on adverse personnel action. The Bush Court recognized that

(f)ederal civil servants are now protected by an elaborate, comprehensive scheme

that encompasses substantive provisions forbidding arbitrary action by supervisors and procedures-administrative and judicial-by which improper action may be redressed. They apply to a multitude of personnel decisions that are made daily by federal agencies. Constitutional challenges to agency action, (such as the ones alleged by plaintiff) are fully cognizable within this system. .

Id. at 385-86.

In reviewing the history and development of civil service remedies, the Court noted the comprehensive nature of the remedies currently available to civil service employees. In analyzing the question of "whether an elaborate remedial system that has been constructed step by step, with careful attention to conflicting policy considerations, should be augmented by the creation of a new judicial remedy for the constitutional violations at issue", the Court determined that Congress, in enacting

the CSRA, did not intend to create a separate judicial remedy. Id. at 388-89. See also United States v. Fausto, 484 U.S. 439 (1988), reh'g denied, 485 U.S. 972 (1988) (Congress denied non-preference eligible employees the right to seek either administrative or judicial review of agency's final action).

5 U.S.C. § 7511 provided that preference eligibles and competitive service employees are given the right to appeal adverse personnel decisions to the Merit Systems Protection Board ("MSPB"), and then to the Court of Appeals for the Federal Circuit. Bush and Fausto stand for the proposition that employees not within these classes are precluded from seeking judicial review. Because plaintiff is not within the classes of employees that may seek judicial review, this court lacks jurisdiction to adjudicate plaintiff's claims. Plaintiff's sole recourse is through the Administrative Grievance and Appeal procedures set forth in the CSRA. 5 U.S.C. § 2302.

Plaintiff also alleges that defendants

violated plaintiff's right to privacy under 5 U.S.C. § 552(a) by taking a package found in a Quick-Chek store waste basket (§ 17). In order for a plaintiff to recover for a violation of § 552(a), he must establish that the disclosed information was intentionally released from an agency system of records. Thomas v. United States Department of Energy, 719 F.2d 342, 345 (10th Cir. 1983); Andrews v. Veterans Administration 838 F.2d 418 (10th Cir. 1988), cert denied, 488 U.S. 817 (1988). Because plaintiff has failed to assert that this information was released from a "system of records", or that the release was willful or intentional, plaintiff's allegations fail to state a cause of action under § 552(a). Thomas, 719 F.2d at 345.

In plaintiff's amendments to his complaint he also challenges the manner in which the Equal Employment Opportunity Office at Fort Monmouth processed his 1984 complaint. Plaintiff's allegation of improper investigation is a procedural matter and

not a condition of employment that creates a separate cause of action. Again, plaintiff fails to state a claim upon which relief can be granted because the proper remedy for this allegation is through the administrative process on the merits of the discrimination claims. Plaintiff must first pursue his underlying age discrimination claim through the Equal Employment Opportunity Commission's administrative process. Trout v. Lehman, 38 F.E.P. 1131 (D.D.C. 1981).

Accordingly,

IT IS on this 20th day of December, 1990
ORDERED that plaintiff's complaint as to
all defendants is hereby dismissed.

_____/S/____

JOHN C. LIFLAND

United States District Judge

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

PAUL OSADCHY,	: CIVIL ACTION
Plaintiff,	: NO. 89-2406 (JCL)
v.	: MEMORANDUM AND
THE UNITES STATES DEPT.	: ORDER
OF THE ARMY, ET AL.,	: ENTERED
Defendants.	: March 20, 91
_____	: William T. Walsh
	Clerk

LIFLAND, District Judge

Plaintiff is a general engineer employed by the United States Army, Communications-Electronics Command, at Fort Monmouth, New Jersey. His complaint alleges various work-related grievances. Presently before the court is defendants' motion for reconsideration of the court's Memorandum and Order filed on December 20, 1990. Pursuant to that Memorandum and Order, the

court granted defendants' motion to dismiss plaintiff's complaint.

Plaintiff argues that the court erred in its determination that plaintiff's complaint involved employment grievances which are not subject to judicial review. Plaintiff, in support of his motion for reconsideration, argues that his complaint is "primarily an Age Discrimination complaint." However, as the court previously determined in its December 20, 1990 Memorandum and Order:

(p)laintiff's original complaint does not involve the 1984 EEO complaint in which plaintiff alleged age discrimination. Rather, that complaint and amendments allege conduct that occurred after the 1984 complaint.

Id. at 2.

Such complaints, which are based on adverse personnel actions, are not subject to judicial review. Bush v. Lukas, 462 U.S. 367 (1983). Plaintiff offers no evidence

that would establish that plaintiff's complaint involved age discrimination issues. Accordingly,

IT IS on this 19th day of March, 1991, ORDERED that plaintiff's motion for reconsideration of the court's December 20, 1990 Memorandum and Order is denied.

/S/

JOHN C. LIFLAND

United States District
Judge

AMSEL-EO (690-700h)

15 August 1989

SUBJECT: Notice of Rejection of

Discrimination Complaint in the

Complaint of Paul J. Osadchy and

John O. Marsh, Jr., Secretary

of the Army (Docket Number Pending)

CERTIFIED RETURN RECEIPT REQUESTED

Paul J. Osadchy 60 Albert Street N.

Arlington, New Jersey 07032

Dear Mr. Osadchy:

This refers to your discrimination complaint dated June 21, 1989, and received on June 22, 1989 which alleged discrimination based on age (66) and reprisal. Receipt of your complaint was acknowledged by my letter to you and your representative, Peter Morfogenis, dated July 6, 1989.

Based on my review and in accordance with Title 29 Code of Federal Regulations (CFR) Part 1613.215(a) (3), I have decided to reject your complaint because the issues raised in your complaint constitute the basis of a pending civil action in a United

States District Court in which you are a party.

This is the final Army decision on your complaint. If you are dissatisfied with the decision to reject your complaint, you may file a notice of appeal with the Equal Employment Opportunity Commission (EEOC or the Commission) at any time up to 20 calendar days after your receipt of this decision. A copy of the notice should be sent to the Director, Equal Employment Opportunity Compliance and Complaints Review Agency (EEOCCRA) ATTN: SFMR-RBE, Washington, D.C. 208310-1813. The appeal should be submitted to the Director, Equal Employment Opportunity Commission, Office of Review and Appeals, 5203 Leesburg Pike, Suite 900, Falls Church, Virginia 22041. Any statement in support of the appeal must be submitted to the Commission within 30 calendar days of filing the notice of appeal. At the same time, you must furnish a copy of the supporting brief or statement to EEOCCARA. The Commission may exercise its discretion

to extend the time limit and accept the appeal if it is not submitted within the time limit, based upon a written showing that you were not notified of the prescribed time limit and were not otherwise aware of it, or that circumstances beyond your control prevented filing the notice of appeal within the prescribed time limit. If you elect not to appeal to the Commission you may file a civil action in the appropriate U.S. District Court within 30 calendar days of your receipt of this decision.

If you file an appeal with the Commission, you may still file a civil action in U.S. District Court within 30 calendar days of your receipt of the Commission's final decision on your appeal. A civil action may also be filed any time after 180 calendar days from the date of filing your appeal to the Commission, if a final decision has not been issued by the Commission's Office of Review and Appeals.

If you file a civil action under Title VII of the Civil Rights Act of 1964, as

amended, or the Rehabilitation Act of 1973, as amended, and you do not have, or are unable to obtain the services of a lawyer, you may request the court to appoint a lawyer to represent you. In such circumstances as the court may deem just, the court may appoint a lawyer and may authorize the commencement of the action without the payment of fees, costs, or security. Any such request must be within the above referenced 30-day time limit for filing suit and in such form and manner as the court may require.

With respect to the allegation of age discrimination, you may file a civil action in a federal district court 30 days after providing a written notice to the EEOC of your intent to file a civil action. Such notice must be given to the EEOC within 180 calendar days of the occurrence of the alleged discriminatory act.

You are further notified that if you file a civil action, you must name the Secretary of the Army as the defendant. Failure to

name the Secretary of the Army may result in the loss of any judicial redress to which you may be entitled. The Secretary of the Department of the Army is John O. March, Jr.

Sincerely,

/S/

Susan M. Morris

Chief

Office of Equal Opportunity

Copied Furnished:

Peter Morfogenis, NFFE, P.O. Box 120, Ft.
Monmouth, NJ 07703-0102

Director, EW/RSTA, ATTN: AMSEL-RD-EW-D,
Ft. Monmouth, NJ 07703-5000

Director, Equal Employment Opportunity
Compliance and Complaints Review Agency,
ATTN: SFMR-RBE, Washington, DC 20310-1813
Commander, US Army Material Command, ATTN:
AMCEE, 5001 Eisenhower Avenue, Alexandria,
Virvinia 22333-0001.

60 Albert Street
N. Arlington, NJ 07032

Aug. 28, 1989

CERTIFIED-RETURN RECEIPT REQUESTED

Department of the Army

US Army Communications-Electronics Command
and Fort Monmouth

Fort Monmouth, NJ 07703-5000

ATTN: AMSEL-EO (690-700h)

SUBJECT: Notice of Rejection of
Discrimination Complaint in the Complaint
of Paul J. Osadchy and John O. March, Jr.,
Secretary of the Army (DA Docket Number
Pending)

Dear Mrs. Morris:

This is to notify you that I elect to
take further action on these matters in
the United States District Court for the
District of New Jersey, Trenton, New Jersey.

Sincerely,

/S/

Paul J. Osadchy

CF:

Peter Morfogenis, NFFE, P.O. Box 120, Ft.
Monmouth, NJ 07703-0102

Director, EW/RSTA, ATTN: AMSEL-RD-EW-D,
Ft. Monmouth NJ. 07703-5000

Director, P&MT, ATTN: AMSEL-ED, Ft. Monmouth,
NJ. 07703-5000

Director, Equal Employment Opportunity
Compliance and Complaints

Review Agency, ATTN: SFMR-RBE, Washington,
DC 20310-1813

Commander, US Army Material Command, ATTN:
AMCEE, 5001 Eisenhower Avenue, Alexandria,
Virginia 22333-0001

Director, Equal Employment Opportunity
Commission

Office of Review and Appeals, 5203 Leesburg
Pike, Suite 900,
Falls Church, Virginia 22041



No. of Candidates 8

Names of Best Qualified Candidate		DOB
DEWAN, MOHINDER K.	43	4/12/41
FEHLNER, GEORGE A.	62	2/14/22
GERARDI, VITO A.	56	8/17/28
KUDERNA, DANIEL W.	<u>27</u>	<u>3/22/57</u>
NEVEROSKI, WILLIAM J.	54	9/30/30
OSADCHY, PAUL J.	<u>61</u>	<u>2/11/23</u>
REYNOLDS, LAWRENCE	57	4/24/27
SCHILLING, WILLIAM A.	50	9/25/34

JEAN DUBOIS, Personnel Staffing Specialist,
X24426

I have considered all of the above candidates on the bases of the following Merit Factors: Knowledge of electronics systems, knowledge of production, skills in the requirement and use of technical data, experience in configuration management, ability to supervise, ability and experience in oral and written communications, and knowledge of the material acquisition process.

I have selected: **Daniel W. Kuderna**

I chose the selected candidates for the following reasons as related to the above factors: Mr. Kuderna, through his application and personal interview, demonstrated the most comprehensive knowledge and experience in all of the above factors. His experience and training in all of these factors combined is considered superior to that of the other candidates (see attachments)

Dated 27 Sep 84 THOMAS J.SHEEHAN /S/

Chief, Production & Engrg Spt Svcs Division

CPO 10/14/84

USACARA

Investigation No. 09-85-040-E

ATTACHMENTS:

EXPERIENCE: Dewan Mohinder K. Dates of
Employment, Position-Title & Grade,
Organization

May 1982 to Present, General Engr, GS-801-
12, CECOM. 1977 to 1982, Senior Associate
Mfg Eng., IBM. 1972 to 1977, Field Service
Tech., General Electric Co. 1971 to 1972
Junior Engr., Roanwell Corp. 1969 to 1970

EDUCATION: Bachelor's Degree- 1966, Master's Degree - 1973 Appraisal 1982-83 " Highly Successful"

EXPERIENCE: George A. Fehlner April 1979
to Present Electronics Engr., GS-855-12,
CECOM. July to April 1979 Electronics Engr.,
GS-855-12, USAECOM COMM/Lab., 1960-1971,
Manufacturing Engr. (1 year) Development
Engr. (4 years) Design Engr. (3 years)
Quality Cost Engr. (3 Years) Eastman Kodak
Co. 1957-1960, Component Engineer, General
Dynamics Corp.

XX

EXPERIENCE: Vito A. Gerardi March 1981-
March 1983 Electronics Engr., GS-855-12,
PM, MSCS, CECOM. September-March 1981
Electronics Engr., GS-855-12 TMDE, CECOM.
January 1972-August 1980
Professor/Consultant, U. of Connecticut.
October 1966- January 1972, Manager Coca-
Cola, CT. April 1963- August 1966 Program

Manager, UTC, CT.

EDUCATION: BS - 1955, MS -1962 Appraisal
June 1983 - October 1983 -"HS"

XX

EXPERIENCE: Daniel W. Kuderna, March - 1983
to Present, Project Engr. Elec.Eng, GS-855-12
, Pdn Eng., CSTA Lab., February 1982 to
March 1983 Electronics Eng., GS-855 - 11
Pdn Eng., CSTA Lab. August 1981 to February
1982 Electronics Engineer, GS-855-9, Pdn
Eng., CSTA Lab. July 1980 to August 1981
Electronics Engineer GS-801-7 Pdn Eng.,
CSTA Lab.

EDUCATION: Bachelor Chemical Engineering
Degree -1972, MBA Degree 1982 Appraisal
March 1983 -July 1983 "FS" Award OPR 1981.

XX

EXPERIENCE: William J. Neveroski,
May 1982 to present Electronic Engr,
GS-855-12, EW Laboratory, June 1978 to May
1982 Staff Engr, GS -855-12, CERCOM.
February 1977 to June 1978, Staff Engr.,
GS-855-12, CERCOM. July 1975 to February
1977 Staff Engr., GS-855-12, RD&E, ECOM.

EDUCATION: Elec Eng Degree -1952, Appraisal
July 1982 - June 1983 - FS.

XX

EXPERIENCE: Paul J. Osadchy, February
1981 to Present, Prod Eng., General Eng.,
GS-801-12, ERADCOM. September 1978 to
February 1981, General Engineer, GS-801-
11, DCASMA, Springfield,
June 1970 to September 1978 President, P.J.O.
Ind. June 1962 to December 1967 Vice
President & General Manager, Garden State
CATV Inc.

EDUCATION: BS 1951, Note not listed:
Honorary Masters Degree 1975. Appraisal
July 1983 - June 1984 - FS.

XX

EXPERIENCE: Lawrence Reynolds , November
to Present, General Engineer, GS-801-12
EW Laboratory. February 1981 to August 1982,
Production Engr/Design Engr. M/A Com Prodelin
Inc.

EDUCATION: BS-1968, Appraisal, November
1982 to May 1983 - FS.

XX

EXPERIENCE: William A. Schilling, July 1982 to Present ,Electronics Engineer, GS-855-12, E.W. Laboratory, March 1982 to July 1982, Transmission Line Eng/Manager, Prodelin Inc., November 1981 - March 1982, Self-Employed, Hightstown, NJ., August 1974-November 1981, Chief Eng/Mfg. Eng., EMC Technology, April 1970 - Aug. 1974, Proj Engineer-Fifth Dimension, Inc., Dec. 1969 -April 1970, Self-Employed, Hightstown, NJ., Sept. 1968 - Dec. 1969, Chief Engineer, Tek-Wave, Inc., Mar. 1966 - Sept. 1968, Mgr. Microwave, Frequency Eng. Lab., Sept. 1964 - Mar. 1966, Member Technical Staff, RCA Labs., Apr. 1962 - Sept. 1964, Acting Chief Engineer, Waveline Inc., June 1956 -Apr. 1962, Project Engineer, Western Union Tel.

EDUCATION: BEE - 1956, MEE - 1960. Appraisal July 1982 - June 1983 - FS.

LAWS APPLICABLE TO DOD PERSONNEL DLAR 5500.1

A. Aiding, abetting, counseling, commanding, inducing, or procuring another to commit a crime under any criminal statute (See 18 U.S.C. 201).

B. Concealing or failing to report to proper authorities the commission of a felony under any criminal statute if such personnel knew of the actual commission of the crime (See 18 U.S.C. 4).

C. Conspiring with one or more persons to commit a crime under any criminal statute or to defraud the United States, if any party to the conspiracy does any act to effect the object of the conspiracy (See 18 U.S.C. 371).

J. Deceit in an examination or personnel action in connection with Government employment (See 18 U.S.C. 1917).

K. Committing fraud or making false statements in a Government matter (See 18 U.S.C. 1001).



INITIAL SUBMISSION OF ALLEGATIONS OF
DISCRIMINATION

EEO COUNSELOR: CARLOS DIAZ

Paul J. Osadchy Electronics Engineer GS-
855-12 , EW/RSTA Center , Feb 1, 1988
Representative, Mr. Peter Morfogenis Pres.
NFFE, x42421, / Co Rep. Dr. Paul Turse
Allegations: Excess List, see enclosed
documents, documents support my Age
Discrimination and filing complaints against
management, ie, flexitime denied
retro.--3/4/88

My desired resolution is : Relief for above
action that caused Mental Trauma and Physical
pain is as follows: Promotion to GS-855-
16- step 6 ,assigned to a project (RPV)
Restore my flexi time 0545-1430 hrs.

/S/ PAUL J. OSADCHY 2/23/88

XX

N.F.F.E. LOCAL GRIEVANCE FORM

Adjustment Request

to the president of Local 476:

Date 1 May 1989 I request assistance in

The adjustment of the following grievance:

Reprisals, Restrictions, Professionalism,
Promotions, Grade increase (WIGE), Transfer
Causal actions (HEART ATTACK 14 Dec. 1985.

Remedy: Correct Comp date, Restoration Sick
Leave, Annual Leave, Insurance Premiums,
OPM Audit, Transfer/Promotion Recognition
of Engineering Talents. Talked to Supervisor.

Response: You have to talk to CPO! Told:
The authority rest with your supervisor(s).

Still in informal process. Known facts by:
Carlos Diaz, Ralph Handy, Torris, Zebrowski.

Actions and conditions that wrongs me: Infor-
mation Pkg(s) are on file with Torris,

CPO, NFFE, IG, MI, CG Staff, Judge Advocate.
Supervisor, Luis A. Torres/Gerald Zebrowski,

Their supervisor: William Warne/Colin

MacDonnell. Work in P&MT, I/EW, ED-IE Position

is General Engineer GS-801-12, Veteran

Military 7/3/40-8/5/40,

2/23/43-10/30/44, Civilian 7/19/78 ot Present.

Phone 201-5444706, Home 201-991 8705, 60

Albert st, N. Arlington, NJ. 07032. Shop

steward is Mr. Peter Morfogenis. PAUL J.

OSADCHY

2 of 5

Valid grievance : Mr. Peter Morfogenis May
8, 1989 ..Record on file with Mr. David
Dingee , Acting Pres. of NFFE Local 476,
Washington DC and With CECOM Shop Stewart
1st VP since 14 Dec. 1988.

XX

FORMAL COMPLAINT OF DISCRIMINATION

AR 690-600

OSADCHY, PAUL J. 544-4706/9,201 991-8705
60 Albert St. N. Arlington, NJ. 07032.
Represented by Peter Morfogenis, NFFE, Shop
Stewart. Discriminated by: CECOM, P&MT,
EW/RSTA, CECOM, Ft. Monmouth, NJ. 07703
Major Army Command: AMC. Discriminated 4
May 1989. Federal Employee, US Army CECOM,
Ft. Monmouth, NJ. 07703, General Engineer
GS-801-12. Discriminated against because
of Age-66 and reprisals. Discussed complaint
with Counselor(s) Carlos Diaz & Ralph Handy,
Interviewed 6/12/89. Allegation: Dept. of
Labor Case No. 2-577206, US District Court
Docket No. 89-2406 (JCL) Reprisals,
Restrictions, Monitoring, Professionalism,
Promotions, Grade Increase (WIGIE), Transfer

Causal Actions, (Heart Attack 14 Dec. 1985,) Excess List, AWOL, Flexitime, Wellness Program, Short Suspenses, False Accusations, Award Recognition. Corrective action to be taken, See attached Affidavit/Summons Docket No. 89-2406 (JCL) and Labor Case No. 2-577206. Did not appeal to the Merit System Protection Board, Filed Negotiated Grievance Procedure, There is an ongoing and continuing battle. In my opinion the EEO Office picks and chooses arbitrarily and capriciously their own agenda as to the type of EEO Complaints looked into and filed by me. PJO. 6/21/89 /S/

/S/ PAUL J. OSADCHY 6/21/89. Signature of EEOO, /S/ SUSAN M. MORRIS, Chief, Office of Equal Opportunity CECOM, Ft. Monmouth, NJ. 07703/5000. Date Filed with EEOO, 22 June 1989

Phone: (201) 532-8988 or Autovon 992-8088

6 June 1990

XX

COMPLAINT HARASSMENT/REPRISAL

My 1st and 2nd line Supervisor(s), Andrew

Flora and Gerald Zebrowski denied me access to the reading file. This denial is contrary to not only TQM philosophy but also is an attack on me personally. This attack is keeping me ignorant of certain events that as a GS-12 General Engineer, I am entitled to have.

I want this harassment/reprisal tactic by Messrs. Zebrowski and Flora to stop immediately and action remedy for my being detailed out of this hostile work environment into a professional career conducive to servicing CECOM, Bottom Line: THE SOLDIER.

Week of 4 June 1990, Messrs.Zebrowski/Flora did not allow me to have access to Reading File.

/S/

PAUL J. OSADCHY
General Engineer
AMSEL-ED-IE



UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

PAUL OSADCHY : Civil No.
v. : 89-2406(JCL)
THE U.S. DEPT. OF THE : ORDER FOR PRETRIAL
ARMY, ET AL : CONFERENCE LIMITING
FILED : FOR COMPLETION
Jun 19, 1990 : OF DISCOVERY AND
John W. Devine : SCHEDULING TRIAL
U.S. Magistrate : NON-JURY

To:

Paul J. Osadchy, Pro Se Plaintiff
Dorothy Donnelly, AUSA
(Attorney for Defendants)

ORDER

This cause having come on for hearing and consideration concerning completion of discovery and the scheduling of a pretrial conference and trial, and the court having considered the positions of counsel for the parties, it is ORDERED that:

1. The parties shall complete all discovery in this cause on or before AUGUST 27, 1990.

2. A pretrial conference will be held before the undersigned in the U.S. Courthouse, Room 221, Trenton, NJ, on THURSDAY, the 27 day of SEPTEMBER, 1990, at 2:00 P.M.

3. The case is set for NON-JURY trial on XXXXXXXXX.

4. The attorneys for all parties are further directed to meet together by agreement, initiated by counsel for the plaintiff, not later than 14 days before the date of the pretrial conference to:

a. discuss settlement;

b. Stipulate as many facts and issues as possible;

c. prepare a pretrial order following the attached form with addenda as required. (Original to the court, with a copy to each counsel);

d. examine all exhibits and documents proposed to be used at the trial;

e. complete all other matters which may expedite both the pretrial and trial of the case.

5. Appropriately colored markers (obtained from the Clerk's office) shall be affixed to the exhibits at or prior to the time they are shown to opposing counsel at the meeting of counsel referred to above, and each marker shall bear the number of the exhibit to which it is affixed.

6. The pretrial stipulation to which reference is made in paragraph 4c above shall be delivered to the magistrate's chambers (at least five days prior) to the date of the pretrial conference.

a. The aforesaid pretrial stipulation shall consist of one document, (shall be signed by all counsel) and shall reflect the efforts of all counsel.

b. After the final pretrial conference the pretrial stipulation will be signed by the magistrate and constitute the pretrial order. The case will then be ready for trial.

c. The final pretrial order, as filed, shall govern the conduct of the trial of the case. Amendments to this order will

be allowed only in exceptional circumstances to prevent manifest injustice.7. In order that the full purpose of the conference may be accomplished, it is directed that each party be represented at all of the conferences herein provided for by an attorney who will participate in the trial of the case and who is vested with full authority by agreement as respects all matters pertaining to the trial of the case and the said conference.

8. The court may, from time to time, schedule conferences as required, either on its own motion or at the request of counsel.

DATED: JUN 19, 1990 _____/S/_____

UNITED STATES MAGISTRATE

JOHN W. DEVINE

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 91-5304

PAUL OSADCHY

vs.

THE UNITED STATES DEPARTMENT OF THE ARMY;

LUIS A. TORRES;

GERALD C. ZEBROWSKI;

DANIEL KURDERNA;

WILLIAM A. WARNE;

COLIN F. MACDONNELL, JR.;

THOMAS SHEEHAN;

VITO DEMONTE;

ROBERT GIORDANO;

LIN HEMRICK; AND

ODESSA LIVINGSTON,

(IN BOTH THEIR OFFICIAL AND INDIVIDUAL
CAPACITIES)

Appeal From the United States District Court

for the District of New Jersey

(D.C. Civ. No. 89-02406)

District Judge: Honorable John C. Lifland

Submitted

August 5, 1991

Before: MANSMANN, HUTCHINSON and NYGAARD,
Circuit Judges.

JUDGMENT ORDER

After consideration of all contentions
raised by the appellant, it is

ADJUDGED AND ORDERED that the judgment
of the district court be and is hereby
affirmed.

Costs taxed against the appellant.

BY THE COURT,

/S/

Carol Los Mansmann

Circuit Judge

Attest:

/S/

Sally Mrvos, Clerk

AUG. 12, 1991

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 91-5304

PAUL OSADCHY

vs.

THE UNITED STATES DEPARTMENT OF THE ARMY;
et al.

SUR PETITION FOR REHEARING

Present: SLOVITER, Chief Judge,
BECKER, STAPLETON, MANSMANN, GREENBERG,
HUTCHINSON, SCIRICA, COWEN, NYGAARD AND
ROTH, Circuit Judges.

The petition for rehearing filed by
appellant in the above entitled case having
been submitted to the judges who participated
in the decision of this court and to all
other available circuit judges of the circuit
in regular active service, and no judge
who concurred in the decision having asked
for rehearing, and a majority of the

circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

BY THE COURT,

_____/s/____

CAROL LOS MANSMANN

Circuit Judge

Sep 11, 1991

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

PAUL J. OSADCHY, : Appeal No. 91-5304
Plaintiff-Appellant : ANSWER TO BRIEF
v. : AND APPENDIX OF
THE UNITED STATES DEPT.: APPELLEE
OF THE ARMY, ET AL, : PETITION FOR
Defendant-Appellee : REHEARING IN BANC
: PETITION FOR WRIT
: OF CERTIORARI TO THE
: UNITED STATES
: SUPREME COURT
: NOTICE

Notice of Petition for writ of Certiorari to the United States Supreme Court is and will be based upon important questions that conflict with the Third Circuit Court of Appeals decision reached 11 September 1991 and that of the Supreme Court (Stevens V. Treasury) and District of Columbia Circuit Court (Venkareddy Chennareddy, General Class Complainant representing himself and all others similarly situated, et al., Appellants

v. Charles Bowsher, Comptroller General of the United States, Nos. 89-5408, 89-5409, District of Columbia Circuit Court of Appeals, June 11, 1991), Attachment package in your possession.

The Appellant "Answer to Brief and Appendix of Appellee," "Appeal No. 91-5304 presents to the Honorable Supreme Court to establish "that victims of Age Discrimination do not have to exhaust administrative complaint procedures before seeking remedies in Court, "as did the Supreme Court (Stevens v. Treasury) and District of Columbia Circuit Court (Venkareddy Chennareddy v. Charles Bowsher), June 11, 1991. Nos, 89-5408, 89-5409, package in your possession. In view of the recent precedent decided April 24, 1991 set by the Supreme Court and District of Columbia Circuit Court of Appeals, I now pray the Honorable Supreme Court send back my case of Age Discrimination (Age 27 v 61) to the Trial Judge to be tried as an Age Discrimination Case only and grant me rightful Court action to receive my just

remedy and relief sought under the Law.

Request to waiver in light of above Notice of Petition to be filed within 90 days of your decision dated 11 September 1991, for Writ of Certiorari to the United States Supreme Court and to preclude any judgment placed upon me that the Third Circuit Court of Appeals deems necessary at this time. Since, if this request is denied, I am willing to negotiate a 60 to 72 month pay back in order to meet my current obligations and not over extend cash flow outlays. Request acknowledgement of this notification by the Third Circuit Court of Appeals.

Respectfully submitted,

/S/

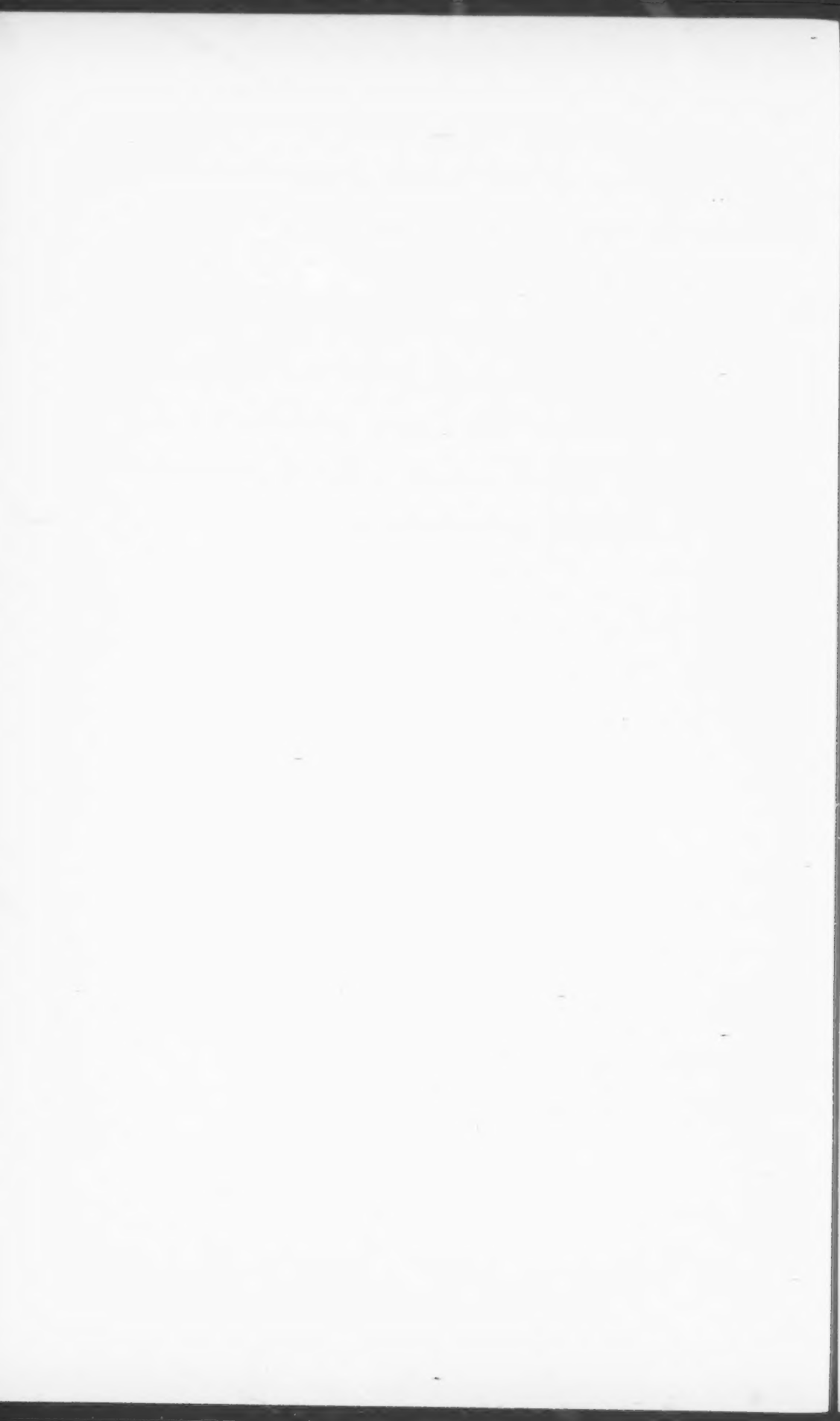
Paul J. Osadchy

Pro Se 26 Sept. 1991

Attachments in your possession

AMENDMENT I TO THE UNITED STATES CONSTITUTION

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1991

NO. _____

Paul J. Osadchy - PETITIONER

VS.

THE UNITED STATES DEPARTMENT OF
THE ARMY, ET AL., - RESPONDENT

PROOF OF SERVICE

I, Paul J. Osadchy, do swear and declare that on this date, November 6, 1991, pursuant to Supreme Court Rules 29.3 and 29.4, I have served the attached PETITION FOR WRIT OF CERTIORARI that party's counsel, and on every other person required to be served by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

Clerk, SUPREME COURT OF THE UNITED STATES
1 First Street, N.E., Washington, D.C.

20543

Dorothy Donnelly, AUSA. US DEPT. OF JUSTICE
402 East State Street
Trenton, New Jersey, 08608
Solicitor General
Department of Justice
Washington, D.C. 20530

/S/

PAUL J. OSADCHY

Subscribed and Sworn to Before Me
this 1 st day of November, 1991.

KENNETH SEMANOVICH

NOTARY PUBLIC OF NEW JERSEY

MY COMMISSION EXPIRES AUGUST 4, 1996

